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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90100; File No. SR-OCC-2020-010]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Concerning the Commingling of Certain Non-Customer Margin Assets with Clearing Fund Contributions in The Options Clearing Corporation’s Account at the Federal Reserve Bank of Chicago

October 6, 2020

I. INTRODUCTION

On August 7, 2020, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2020-010 (“Proposed Rule Change”) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder to provide OCC with express authority to hold cash Clearing Fund contributions and certain non-customer cash margin assets in its account at the Federal Reserve Bank of Chicago at the same time.³ The Proposed Rule Change was published for public comment in the *Federal Register* on August 24, 2020.⁴ The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing *infra* note 4, 85 FR at 52176.

⁴ Securities Exchange Act Release No. 89590 (Aug. 18, 2020), 85 FR 52176 (Aug. 24, 2020) (File No. SR-OCC-2020-010) (“Notice of Filing”).

has received no comments regarding the Proposed Rule Change. This order approves the Proposed Rule Change.

II. BACKGROUND

Since March 15, 2016, OCC has maintained an account at the Federal Reserve Bank of Chicago to hold cash deposits from its Clearing Members to satisfy margin and Clearing Fund requirements.⁵ OCC's current rules restrict the manner in which OCC may hold Clearing Fund contributions and margin assets.⁶ As a result, OCC holds cash Clearing Fund contributions in its Federal Reserve Bank Account, but separately holds Clearing Members' cash margin assets in accounts with commercial banks. To authorize OCC to comingle certain cash margin and cash Clearing Fund contributions, OCC proposes to amend its Rules 604 and 1002 as described below.

Current rules. OCC Rule 604(d) requires that certain cash margin assets of Clearing Members ("Specified Cash Margin Assets") must be deposited to the credit of OCC in an account or accounts,⁷ designated as Clearing Member margin accounts, with such banks, trust companies or other depositories as the Board of Directors may select. Rule 604(d) further

⁵ See Federal Reserve Bank of Chicago authorization to provide accounts and services to Options Clearing Corporation and Chicago Mercantile Exchange, Inc., in accordance with the Dodd-Frank Act and Regulation HH, approved March 15, 2016 (<https://www.federalreserve.gov/releases/h2/20160319/h2.pdf>).

⁶ See OCC Rules at https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf.

⁷ OCC Rule 604(d) expressly excludes from these Specified Cash Margin Assets those funds that are: (i) Deposited in respect of a segregated futures account (which must be held in accordance with the provisions of Section 4d of the Commodity Exchange Act and regulations thereunder); (ii) invested by OCC pursuant to Rule 604(a); or (iii) credited by OCC to a liquidating settlement account pursuant to Chapter XI of OCC's Rules.

prohibits OCC from commingling Specified Cash Margin Assets with OCC's funds of OCC or using such assets as working capital.

OCC Rule 1002(c) requires, among other things, that cash Clearing Fund contributions not otherwise invested shall be deposited by OCC in accounts with approved custodians, which include the Federal Reserve Bank of Chicago. Rule 1002(c) permits the comingling of Clearing Fund contributions from different Clearing Members.⁸ OCC currently holds cash Clearing Fund contributions in its Federal Reserve Bank Account.

Proposed Rule Change to OCC. OCC proposes to add language to Rule 604 to allow OCC to deposit Specified Cash Margin Assets in a Federal Reserve Bank Account not designated as a Clearing Member margin account. The proposed change would apply only to non-customer margin assets.⁹ OCC proposes further to add language to its Rules 604 and 1002 to allow OCC to commingle such assets and cash Clearing Fund contributions deposited in a Federal Reserve Bank Account.

III. DISCUSSION AND COMMISSION FINDINGS

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder

⁸ See OCC Rule 1002(c) available at https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf.

⁹ See Notice of Filing, 85 FR at 52177 (stating that OCC proposes to add Interpretation and Policy .18 to Rule 604 to provide that, notwithstanding anything else in Rule 604, Specified Cash Margin Assets held by OCC as non-customer margin assets and deposited to the credit of OCC in its Federal Reserve Bank Account may be deposited in accounts that are not designated as Clearing Member margin accounts and may be commingled with cash Clearing Fund contributions.)

applicable to such organization.¹⁰ After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act,¹¹ Rule 17Ad-22(e)(7)(iii) and Rule 17Ad-22(e)(16) thereunder.¹²

A. Consistency with Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.¹³ Based on its review of the record, and for the reasons described below, the Commission believes that allowing OCC to deposit non-customer margin in its Federal Reserve Bank Account commingled with cash Clearing Fund contributions as described above is consistent with the safeguarding of securities and funds for which it has custody or control over.

The Proposed Rule Change would allow OCC to deposit non-customer cash margin at a Federal Reserve Bank Account. The Commission continues to believe that access to a Federal Reserve Account is a valuable tool,¹⁴ and that the use of such a tool would reduce custody risk in

¹⁰ 15 U.S.C. 78s(b)(2)(C).

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² 17 CFR 240.17Ad-22(e)(7)(iii) and 17 CFR 240.17Ad-22(e)(16).

¹³ 15 U.S.C. 78q-1(b)(3)(F).

¹⁴ See Securities Exchange Act Release 71699, 79 FR 29508, 29533 (May 22, 2014) (File No. S7-03-14).

a clearing agency.¹⁵ Further, the Proposed Rule Change would not limit OCC's access to commercial banks, and would, therefore, provide OCC with an additional custodian at which to deposit non-customer cash margin. The Commission believes, therefore, that adopting rules allowing OCC to deposit non-customer cash margin in a Federal Reserve Bank Account is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.¹⁶

B. Consistency with Rule 17Ad-22(e)(7)(iii) under the Exchange Act

Rule 17Ad-22(e)(7)(iii) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, inter alia, using access to accounts and services at a Federal Reserve Bank, or other relevant central bank, when available and where determined to be practical by the board of directors to enhance its management of liquidity risk.¹⁷ In recognizing that there may be a number of ways to address compliance with Rule 17Ad-22(e)(7), the Commission has stated that a covered clearing agency generally should consider, when establishing and maintaining policies and procedures that address liquidity risk, including if the covered clearing agency has access to central bank accounts, payment services, or securities services, whether it uses these services, where practical,

¹⁵ See Securities Exchange Act Release 68080, 77 FR 66220, 66268 (Nov. 2, 2012) (File No. S7-08-11).

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

¹⁷ 17 CFR 240.17Ad-22(e)(7)(iii).

to enhance its management of liquidity risk.¹⁸

OCC may use cash margin deposits, including non-customer cash margin deposits, to manage liquidity risk. OCC recently adopted a the Liquidity Risk Management Framework document (“LRMF”) that sets forth a comprehensive overview of OCC’s liquidity risk management practices and governs OCC’s policies and procedures as they relate to liquidity risk management.¹⁹ The LRMF describes the primary liquidity risks OCC faces when managing a Clearing Member default, and describes the maintenance of liquidity resources designed to address a variety of stress scenarios through the sizing of such resources.²⁰ The LRMF defines such liquidity resources to include cash margin deposits where such deposits are required under OCC’s Contingency Funding Plan.²¹ The Proposed Rule Change would permit, but not require, OCC to use its access to a central bank account as a depository for non-customer cash margin. The Commission believes, therefore, that allowing OCC to deposit non-customer cash margin in a Federal Reserve Bank Account is consistent with the requirements of Rule 17Ad-22(e)(7)(iii) under the Exchange Act.

C. Consistency with Rule 17Ad-22(e)(16) under the Exchange Act

Rule 17Ad-22(e)(16) requires a clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to safeguard its own and its

¹⁸ See Securities Exchange Act Release 78961, 81 FR 70786, 70823-24 (Oct. 13, 2016) (File No. S7-03-14).

¹⁹ See Securities Exchange Act Release 89014 (Jun. 4, 2020), 85 FR 35446 (Jun. 10, 2020) (File No. SR-OCC-2020-003) (“LRMF Approval Order”).

²⁰ See LRMF Approval Order, 85 FR at 35447.

²¹ See id.

Clearing Members' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.²² The Proposed Rule Change would expand OCC's ability to use its Federal Reserve Bank Account by allowing it to deposit non-customer cash margin provided by Clearing Members in the same account used to custody cash Clearing Fund contributions. As stated above, the Commission believes that access to a Federal Reserve Account is a valuable tool,²³ and that the use of such a tool would reduce custody risk in a clearing agency.²⁴ OCC deposits cash Clearing Fund contributions in its Federal Reserve Bank Account, but is precluded from depositing margin in the same account under its current rules. The Commission believes, therefore, that expanding the Clearing Member funds that OCC may custody in its Federal Reserve Bank Account to include non-customer cash margin is consistent with the requirements of Rule 17Ad-22(e)(16) under the Exchange Act.

²² 17 CFR 240.17Ad-22(e)(16).

²³ See Securities Exchange Act Release 71699, 79 FR 29508, 29533 (May 22, 2014) (File No. S7-03-14).

²⁴ See Securities Exchange Act Release 68080, 77 FR 66220, 66268 (Nov. 2, 2012) (File No. S7-08-11).

IV. CONCLUSION

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act²⁵ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,²⁶ that the Proposed Rule Change (SR-OCC-2020-010) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

J. Matthew DeLesDernier,

Assistant Secretary.

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²⁵ In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).